IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8356 OF 2003

Tanaji Narayan Maske : petitioner
(Orig. Plaintiff)

V/s.

Bharat Sukhadev Thite : Respondent
(Orig. Defendant)

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Mr.P.B.Shah for the petitioner.

Mr.D.J.Deshmukh for the respondent.

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CORAM : S.A. BOBDE, J.

January 19, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Deshmukh waives service on behalf of the respondent.

Heard by consent.

2. The petitioner who obtained a decree for specific performance of a contract against the respondent on 2.5.2001 has challenged the order below exh.56 refusing him extension of time to deposit the money as ordered by

the decree.

3. On 2.5.2001 the Court decreed the petitioner's suit and directed him to pay a sum of Rs.32,000/- within two months. The petitioner did not or could not do so. Therefore, on 17.7.2001 i.e. about 15 days beyond the time stipulated, he applied for extension of time to deposit the balance. He prayed for permission to deposit Rs.10,000/- immediately and sought some more time to deposit the balance. He pleaded that he was an agriculturist and unable to pay the amount within the time originally stipulated. This application was rejected by the trial Court, inter alia, on the ground that the plaintiff has not filed execution petition and that the condition which is imposed by the Court on the basis of evidence on record is not a formal condition.

4. The learned counsel for the respondent contended that the Court does not have the power to extend time in such a case. He further contended that the Court having become **functus officio**, the application for extension of time is not tenable since it is made beyond the originally stipulated period.

5. Mr.Shah, learned counsel for the petitioner, has

rightly relied on section 28 of the Specific Relief Act which clearly contemplates the existence of the power to extend time.

6. There is also no merit in the second contention raised on behalf of the respondent since section 148 of the C.P.C. specifically enables a party to apply for extension of time even though the period originally fixed may have expired.

7. The learned counsel for the respondent stated that there is no appeal pending against the original decree.

8. Having regard to the circumstances of the case, I am of view that the order of the trial Court results in miscarriage of justice and virtually defeats the decree. It is, therefore, liable to be set aside. The petitioner has been directed by this Court to deposit a sum of Rs.45,000/- and time as prayed for by the petitioner has been extended. The amount of Rs.45,000/- deposited by the petitioner may be withdrawn by the respondent who shall thereupon act in accordance with the judgement and decree dated 2.5.2001 in Special Civil Suit no.24 of 1997.

9. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.